

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-138112-09
Date:
January 07, 2010

Legend

X =

A =

Date =

State =

Dear :

This letter responds to a letter dated July 7, 2009, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

Facts

X was incorporated under State law on Date. A, the sole shareholder of X, intended for X to be an S corporation effective Date. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

X represents that both X and A have reported their income consistent with X's intended status as an S corporation. X requests a ruling that it will be recognized as an S corporation effective Date.

Law and Analysis

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) shall be effective for the current taxable year if it is made during the preceding taxable year or before the 15th day of the third month of the current taxable year. Section 1362(b)(3) provides that an election made after the 15th day of the third month of the current taxable year shall be treated as having been made for the following taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then the election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to make the election, then the Secretary may treat the election as timely made for the taxable year and § 1362(b)(3) shall not apply.

Conclusion

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective Date, within 60 days following the date of this letter, the election shall be treated as timely made. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

/s/

Leslie H. Finlow
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes